

17.01.2023
Item No. 03.
Court No.6.
S. De

M.A.T. 834 of 2022
with
I.A. No. CAN/1/2022
I.A. No. CAN/3/2023

Smt. Mira Shaw.
Vs
Bhatpara Municipality & Ors.

Ms. Lakshmi Shaw,
...for the appellant/writ petitioner.
Mr. Pritam Mazumder,
...for the Municipality.

This case has a chequered history. Several rounds of litigations have taken place between the parties. The same may not be strictly relevant any more. Hence we do not advert to the same.

This appeal is directed against a judgment and order dated May 13, 2022, whereby the appellant's writ petition being WPA 6957 of 2020 was disposed of by a learned Single Judge.

The appellant approached the learned Single Judge saying that the building that she owns is in dangerous and dilapidated condition and needs immediate demolition. Her further prayer was that she should be allowed to demolish the building without referring the matter to the Bhatpara Municipality within the territorial limits of which the building is situate.

The learned Judge noted the previous litigations between the parties and disposed of the writ petition by directing the Municipality to proceed in accordance with law in terms of Sections 222, 223 and 327 of the West Bengal Municipal Act 1993. The learned Judge further observed as follows :-

“As it is submitted by the petitioner that the building is in a dilapidated condition and needs immediate demolition, the proceeding shall be initiated and concluded by the municipality within a period of four weeks from the date of communication of this order.

The prayer of the petitioner to grant permission to effect demolition on her own cannot be allowed by this court as the statute has prescribed a procedure in this regard, as quoted hereinabove. The writ court cannot pass any order which is not permitted by law. A court cannot circumvent the law. Moreover the Division Bench had already permitted the municipality to proceed in accordance with law and the said order has attained finality. Any order by this court, would amount to modification of the order of the Division Bench.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

Honestly speaking, we have not been able to understand why the appellant is aggrieved with the impugned order. The learned Judge has directed the Municipality to proceed in accordance with law meaning thereby, to act in terms of Sections 222, 223 and 327 of the 1993 Act. Section 222 empowers the Board of Councillors of the Municipality to pass orders requiring the owner or occupier of a building to maintain the building in proper condition so that the same does not pose threat to the occupiers or anybody in the vicinity of the building. Section 223 empowers the Board of Councillors to direct the owner of a building or any other person having an interest in the building, whether as lessee, mortgagee or otherwise, to show-cause as to why an order of demolition should not be made, if the Board of Councillors is satisfied that the building is unfit for human habitation and is not capable of being rendered fit at a reasonable expense. If the noticee can show adequate cause demolition order may not be passed. The Board of Councillors may record an undertaking from the noticee that the building will be repaired and made fit for human habitation. If however, the Board of Councillors is not satisfied with the response to the show-cause, a demolition order may be made. The owner or other interested party against whom the demolition order is passed will have to demolish the

building within the time period specified in the order. In the event of failure of such person to carry out the demolition activity within the prescribed time period, the Municipality shall demolish the building at the cost of the owner or other interested party, as the case may be.

Therefore, the scheme of Section 223 is clear that if the Board of Councillors takes a decision for demolition of a building, the Board shall first call upon the owner of the building to demolish the same within a specified time period. This is exactly what the appellant/writ petitioner wants and this is exactly what the learned Single Judge has provided for in the order impugned. Hence, we have not been able to apprehend how the writ petitioner is aggrieved.

Be that as it may, if we peruse the history of this litigation, we will see that the Municipality has shifted its stand from time to time. In 2013, a notice of demolition was issued by the Municipality to the present appellant. Such notice was challenged by way of a writ petition. Before the learned Single Judge it was submitted on behalf of the Municipality that the building in question is in a very dangerous condition and must be demolished immediately. This was recorded by the learned Judge in the order dated July 4, 2013 disposing of the writ petition being AST 126 of 2013.

Thereafter, it appears that in 2018 the Municipality granted permission to the appellant to repair the premises. We fail to understand how the Municipality could grant permission, be it on the prayer or request of the appellant, to repair a building which according to the Municipality in 2013, required immediate demolition.

Even before us two reports were filed on behalf of the Municipality after inspection of the building in question. The same were inconsistent. The appellant prayed for appointment of an independent Civil Engineer for the purpose of inspecting the building and filing a report. Accordingly, we appointed Sri Puranjoy Konar, a Chartered Civil Engineer empanelled with this Court, to inspect the building in question and file a report. Such report dated December 13, 2022 was filed. The report is to the following effect :-

- “1. I found that first floor roof collapse at four portion of the entire building.*
- 2. Total building has covered by big size banyan trees.*
- 3. Roof of the building totally covered by big size banyan trees as a garden. Total roof of the first floor damage by root of trees.*
- 4. Ground floor roof collapse at one portion and others portion condition not good.*

5. Floor & roof of balcony portion of first floor have collapse at different portion of this building.

6. Crack develops (Slab & wall) at major portion of this building by the root of banyan trees.

7. Finally, the existing structure of the two storied building is considered as dilapidated structure and it needs total demolition of the building in order to save the lives and property of the residents who are staying over there.”

We have noted the background of this appeal.

However, the fact remains that whether or not the building needs to be demolished is to be decided by the Board of Councillors of the Municipality. We are told that till date no such decision of the Board of Councillors has been taken. This is very unfortunate.

Without further ado, we direct the Board of Councillors of the Bhatpara Municipality to take a decision under Section 223 of the West Bengal Municipal Act 1993 taking into consideration the reports filed on behalf of the Municipality before us and also the report of the independent Civil Engineer namely Sri Puranjoy Konar, which suggests, in no uncertain terms, that the building requires immediate demolition for the safety and security of the lives and property of the residents who are staying there. Such a decision will be taken within four weeks from the date of communication of this order along with the

report of the independent Civil Engineer namely Sri Puranjoy Konar by the appellant. A reasoned decision will be taken by the Board of Councillors in accordance with law, after giving an opportunity of hearing to the appellant or her authorized representative and any other concerned party as the Board may deem proper.

The appellant tells us that there is a tenant in respect of one storeroom in the concerned building being the respondent no.7 herein. The respondent nos. 8 and 9, who according to the appellant are trespassers, are occupying one room illegally. None of those persons are in physical occupation of the rooms. The rooms are kept under lock and key. We are told that eviction suits have been filed by the appellant for recovering possession from the said respondents. The appellant undertakes to rehabilitate the said respondents in equal areas as they are now occupying in the new building that is to be constructed after demolition of the present building in the event the appellant does not succeed in the civil suits that are pending. We have only recorded the aforesaid submission made on behalf of the appellant and make no comment thereon. Any observation in this order shall not have any bearing on the pending civil suits between the appellant and the private respondents.

We clarify that in the event the Board of Councillors come to a conclusion that demolition of the building in question is necessary, it will first issue a self-demolition order as is contemplated by Section 223 of the 1993 Act. Only if the appellant fails to comply with the self-demolition order, the Municipality will demolish the same at the appellant's cost.

The appeal being MAT 834 of 2022 is, accordingly, disposed of along with the applications being I.A. No.CAN/1/2022 and I.A. No.CAN/3/2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)